IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 339 OF 1995

The State of Maharashtra ...Appellant.

Versus

Dr. Vishnu Kalu Jagtap,
Age 40 years,
R/o. Gadhinglaj,
Dist. Kolhapur ...Respondent

.....

Shri. A.S. Shitole, A.P.P. for the appellant

Shri. N.J. Patil, Adv. for the respondent.

.....

CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 28TH SEPTEMBER, 2004

ORAL JUDGMENT:-

1. Through this appeal, the State of Maharashtra challenges the judgment and order dated 29.3.1995 passed by the learned J.M.F.C. Gadhinglaj in Summary criminal Case No.755/1990. By the said judgment the learned Magistrate acquitted the respondent-accused U/sec. 42 r.w. section 52 of the Maharashtra Regional Town Planning Act, 1966 (hereinafter referred to as "the MRTP Act" for the sake of brevity).

2. The prosecution case briefly stated is as

under:-

. That the respondent constructed a house in City survey Nos.98 at Gurav Colony in Gadhinglaj without permission from the Municipal Council and thereby committed an offence under Section 42 r.w. Section 52 of the MRTP Act.

. It is the case of the prosecution that the complainant P.W.1 Shri. Sayaji Bhosale was a Junior Engineer in Municipal Council Gadhinglaj. Part of his duty was to take search of illegal construction. On 14.8.1989 he visited survey No.98, Gurav Colony, Gadhinglaj and found that respondent had constructed a house measuring 7.90 X 2.55 X 2.40 meters in stones with R.C.C. slab, 7.90 X 13.25 X 3.00 meters without permission. Hence, the complainant filed his complaint (Exh.28/C) in the police station at Gadhinglaj alongwith the inspection report. He also obtained sanction (Exh. 29) from the Chief Officer for prosecution against the respondent-accused. P.S.I. Gadhinglaj registered crime against the respondent-accused and after due investigation submitted charge-sheet against him.

3. Plea of the respondent came to be recorded. He pleaded not guilty. His defence is that of total

denial. After considering the evidence led by the prosecution, the learned Magistrate acquitted the respondent-original accused of the offence under Section 42 r.w. 52 of the MRTP Act. Hence, this appeal.

4. In the present case the prosecution has examined two witnesses P.W.1 Shri. Bhosale who is the complainant and P.W.2 Dattatraya Shendge is the panch witness who has been examined in relation to the panchanama showing the illegal construction. It may be stated here that the panch witness has turned hostile and has not supported the prosecution case, therefore, the evidence of P.W.2 panch witness Dattatraya Shendge is of no use to the prosecution to prove the guilt of the respondent-accused.

5. As stated earlier, the prosecution has examined the complainant i.e. P.W.1 Shri. Bhosale who was a Junior Engineer in the Municipal Council, Gadhinglaj. He has deposed that on 14.8.89 he visited survey No.98 at Gurav Colony, Gadhinglaj and found that the respondent had constructed a house without permission. The house was admeasuring 7.90 X 2.55 X 2.40 Meters in stones with R.C. C. slab 7.90 X 13.25 X 3.00 meters. He has further stated that he filed complaint

(Exh.28/C) in Gadhinglaj police station alongwith inspection report. He has further stated that he obtained sanction (Exh.29) from the then Chief Officer for prosecution against the respondent.

6. One of the reasons for the learned Magistrate to acquit the respondent is that at the time when the complaint was filed no sanction was accorded by the Chief Officer. The sanction (Exh.29) is dated 07.06.90, the complaint was filed at Gadhinglaj police station on 30.4.90. From this it is clear that on the date of filing of the complaint no sanction had been accorded by the Chief Officer. Moreover, what has been produced by the prosecution as a sanction is not really a sanction but it is a copy of a letter addressed to P.S.I. Gadhinglaj. In this view of the matter, the learned Magistrate held that the prosecution is vitiated. The learned Magistrate has relied on the decision of this Court in the case of **Municipal Corporation Aurangabad, through Municipal Commissioner, Vs. Shankar Haribhau Jadhav and another reported in 1986 (2) Bom. C.R. 38.** In the said case it has been held in para 13 as under:-

> " The Chief Officer has two fold powers, the power to sanction and power to complain. His complaint

> therefore can itself be a sanction, because he can exercise both these powers simultaneously. In the cases of other officers or authority in whom both the powers do not vest, the complaint filed by one shall have to be proceeded by the sanction validly given by the other".

7. In the present case it is an admitted fact that Chief Officer has not filed the complaint but P.W.1 Shri. Bhosale who is a Junior Engineer has filed the complaint. In the aforesaid ruling it is clearly observed that when the Chief Officer himself is complainant no separate sanction is necessary. But when the complaint is filed by another officer then valid sanction of Chief Officer is necessary before filing of complaint otherwise the prosecution would be bad by virtue of provisions of section 142 of the MRTP Act.

8. In the present case, there is no material to show that sanction was really accorded. Moreover the sanction (Exh.29) if at all it has been accorded, has been accorded by the Chief Officer after filing of the complaint by P.W.1 Shri. Bhosale in Gadhinglaj police station. From this it is clear that there was no sanction when the

complainant P.W.1 Shri. Bhosale filed complaint in Gadhinglaj police station on 30.4.90. Thus, based on the aforesaid ruling, the learned Magistrate acquitted the respondent accused.

9. In my opinion, the view taken by the learned Magistrate is a possible and a reasonable view. If the view of acquittal could have been reasonably arrived at then the mere circumstance that the appellate Court could have taken different view would be no ground to interfere. In this connection, there are no dearth of authorities but to eschew prolixity, I am only referring to few of them i.e. **AIR 1971 SC 66 Khedu Mohton and Ors. Vs. State of Bihar, AIR 1987 SC 1083 Totasing Vs. State of Punjab and 1997(1) Mh.L.J. 770 State of Maharashtra Vs. Balram @ Nam Amarsingh Talwar.** It has been observed in para 12 of the decision in 1997 (1) Mh. L.J. 770 that:-

> 12. At the very outset, we would like to point out that we are seized of the matter in an appeal against acquittal. it is well settled that unless appreciation of evidence is clearly unreasonable or the impugned order of acquittal is vitiated by some illegality, this Court does not interfere in an

appeal against acquittal. It is equally well settled that if the view of acquittal is a possible view then this Court does not interfere in spite of the fact that it may feel that had it been the trial Court, it may have taken a different view. We are fortified in our view by the decisions of the Apex Court reported in **AIR 1971 SC 66 Khedu Mohton and Ors. Vs. State of Bihar and AIR 1987 SC 1083 Tota Singh Vs. State of Punjab.** We also feel that in this connection, it would be pertinent to refer to the decision of the Apex Court reported in **1995(2) SCC 486, State of Punjab Vs. Ajiab Singh,** where in para 7, Their Lordships of the Apex Court observed thus:-

> "We agree that this Court is not precluded or the court hearing the appeal against acquittal is not prevented from examining and reappreciating the evidence on record. But the duty of a court hearing the appeal against acquittal in the first instance is to satisfy itself if the view taken by

> acquitting court exercising appellate jurisdiction was possible view or not. And if the court comes to conclusion that it was not, it can on reappreciation of evidence reverse the order."

10. In my view, the view taken by the learned Magistrate is a reasonable and possible view in such circumstances, no interference is called for in the order of acquittal passed by the learned Magistrate. Criminal appeal is dismissed.